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Security Council

Sixtieth year

Provisional

5321st meeting

Tuesday, 13 December 2005, 10 a.m.
New York

President	Sir Emyr Jones Parry	(United Kingdom)
Members	Algeria	Mr. Baali
	Argentina	Mr. Mayoral
	Benin	Mr. Idohou
	Brazil	Mr. Sardenberg
	China	Mr. Zhang Yishan
	Denmark	Mr. Faaborg-Andersen
	France	Mr. Duclos
	Greece	Mr. Vassilakis
	Japan	Mr. Kitaoka
	Philippines	Mr. Mercado
	Romania	Mr. Dumitru
	Russian Federation	Mr. Rogachev
	United Republic of Tanzania	Mrs. Taj
	United States of America	Mr. Brencick

Agenda

Reports of the Secretary-General on the Sudan

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05-63901 (E)

The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.

It is so decided.

I should like also to welcome the presence of the Secretary-General, Mr. Kofi Annan.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear a briefing by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court. I now give him the floor.

Mr. Moreno-Ocampo: I welcome the opportunity to address the Security Council once again on the activities undertaken by my Office since my first report on 29 June 2005. The current reporting period coincides with the first phase of the investigation. As the Council is aware, I launched the investigation on 1 June 2005.

In the first phase, my Office has made good progress in gathering facts relating to the universe of crimes alleged to have taken place in Darfur as well as to the groups and individuals responsible for those crimes.

In order to carry out the investigation, my Office has completed its recruitment of a multi-disciplinary team and has developed the essential infrastructure for the management and analysis of large quantities of information and evidence. We are also addressing the challenge of identifying and training impartial and effective interpretation and translation services.

In accordance with the policies and strategies of the Office, in the coming second phase the investigation will focus on a selected number of criminal incidents and on those persons bearing the greatest criminal responsibility for those incidents.

My Office has collated a comprehensive picture of the crimes allegedly committed in Darfur since 1 July 2002. From that overall picture, we have identified particularly grave events, involving a large number of killings, mass rapes and other forms of extremely serious gender violence, for full investigation.

We continue to monitor ongoing violence. Attacks on humanitarian workers and facilities remain prevalent, including incidents involving the killing of African Union peacekeepers. The impact of those crimes on the delivery of humanitarian assistance and on efforts to secure peace and stability in Darfur has been highlighted recently in the November report of the Secretary-General on Darfur. In some instances, those crimes may fall within the jurisdiction of the Court. I encourage national and international organizations suffering such attacks to take steps to record and preserve information and evidence and to provide those materials to us.

There continues to be a great deal of speculation about the list of 51 names prepared by the International Commission of Inquiry on Darfur. As I have said before, that list, which remains sealed, represents the conclusion of the Commission of Inquiry and is in no way binding upon the Prosecutor. In addition, it should be emphasized that the activities and objectives of the sanctions Committee and the Panel of Experts established by resolution 1591 (2005) are entirely distinct from the work of my Office.

We will conduct our own independent assessment of available information in accordance with our policies and the Rome Statute. At the proper time, we will present that information to the judges. In the coming months, upon completion of that first investigative phase, my Office will identify persons to be prosecuted, subject to article 53(2) of the Rome Statute and will present that information to the judges. I would like to emphasize that no decision has been taken at this stage as to whom to prosecute.

Witness protection is an issue of paramount concern to the Court. As I have already indicated, the current security situation in Darfur remains volatile, with ongoing violence and attacks. The establishment of an effective system for the protection of witnesses

and victims is a precondition to the conduct of investigative activities in Darfur. Given the prevailing climate of insecurity and the current absence of an effective system of protection, investigative activities have so far taken place outside Darfur.

Despite those limitations, significant progress has been made in the investigations, thanks to the information and other forms of assistance provided by States and organizations. We have identified witnesses in 17 countries. Well over 100 potential witnesses have been screened, and a number of formal statements have already been taken. We are currently screening hundreds of additional potential witnesses, either directly or with the assistance of States and organizations. To facilitate that process, my Office has established a semi-permanent presence in the region, which provides logistical, security and other support to the process of witness identification and interview.

The International Criminal Court is complementary to national criminal jurisdictions. In accordance with article 53(2)(b) of the Rome Statute, the legal test is specific to the cases selected for prosecution, and not the state of the Sudanese justice system as a whole. Accordingly, my Office continues to gather and assess information relating to the various mechanisms established by Sudanese authorities in relation to crimes allegedly committed in Darfur, including the special court for Darfur established by decrees issued on 7 and 11 June 2005.

It has been reported that, in November 2005, a decree was issued establishing two new special courts, to sit in Geneina and Nyala. Additional prosecutors and judges have been appointed to staff those courts. It has also been reported that the jurisdiction of the special court has been expanded to consider allegations of violations of international humanitarian law. The Government of the Sudan has renewed its commitment to allow access to the African Union and other international monitors. In addition, various other mechanisms and committees have been established to look at aspects of the crimes in Darfur, including centres for the elimination of violence against women and an attorney's office on crimes against humanity. The Government of the Sudan has also pointed to efforts to promote tribal reconciliation and to the proposed conference on Darfur scheduled to take place in December 2005 as efforts towards a comprehensive solution to the conflict.

However, the continuing insecurity in Darfur does not allow for an effective system for the protection of victims and witnesses. That has forced my Office to carry out investigations outside Darfur. It also represents a serious impediment to the conduct of effective investigations in Darfur by national judicial bodies. No one can call a witness in Darfur. Up until this point, the work of the special court does not suggest that cases likely to be prosecuted before the International Criminal Court will be inadmissible under the terms of article 53(2)(b) of the Statute. However, my Office will continue to follow closely all national proceedings.

In addition to the issue of admissibility, I am also required by the Rome Statute to consider whether a prosecution is not in the interest of justice. In considering that factor, I will follow the various national and international efforts to achieve peace and security, as well as the views of witnesses and victims of the crimes.

Resolution 1593 (2005) requires the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court and the Prosecutor. The resolution also urges other States and organizations, in particular the African Union, to cooperate fully. Since our last report to the Council, the Court has continued to press for the signing of the International Criminal Court-African Union relationship agreement, the text of which was finalized in May 2005. In addition, I have contacted the African Mission in Sudan in Khartoum and written to the Chairperson of the African Union to seek meetings with the relevant officials to discuss the modalities for cooperation with regard to Darfur, as well as to request an opportunity to brief the Peace and Security Council. The next phase of the investigation will be a decisive one, the success of which will require the full cooperation of the African Union. It is hoped that rapid progress in that relationship will be achieved in that phase.

The current reporting period has seen further steps in the implementation of the Comprehensive Peace Agreement, including the establishment, on 22 September 2005, of the new Government of National Unity. In the lead-up to that transition the Office of the Prosecutor did not make formal requests for assistance to the Sudan, but contacts with Sudanese authorities were maintained.

As I have set out in this statement, following the initiation of the investigation, my Office has gathered information and evidence from outside Darfur. During this initial fact-finding phase, it is vital that the Office develop a full understanding of the situation in Darfur and the context in which the alleged crimes took place.

In that regard, from 17 to 24 November 2005, representatives of my Office and the Registry of the ICC visited Khartoum to discuss matters related to the Lord's Resistance Army and the situation in Darfur. As part of the fact-finding process, during that visit a request for assistance was made to the Sudanese authorities to undertake several interviews that could provide an insight into the activities of all parties to the conflict in Darfur, as well as an assessment of national proceedings undertaken by the special courts and other relevant judicial bodies.

In response to that request, Sudanese officials have agreed to organize a visit to the Sudan by the end of February 2006 by representatives of my Office to meet with the special courts and other relevant judicial bodies in order to assess national proceedings in relation to alleged crimes committed in Darfur. In addition, officials also agreed that, in preparation for the other interviews, the Ministry of Defence would cooperate in establishing and submitting, by March 2006, a comprehensive report on matters to be identified in advance by us. By the time of submission of my report to the Council, I was still waiting for written confirmation of those practical arrangements by the Government of the Sudan. The Government of the Sudan has now provided us with that written confirmation.

We have also had contacts with other parties to the conflict, including the main rebel groups. Establishing consistent liaison with the Sudan Liberation Movement/Army has been hampered by divisions within the group. However, we continue to open channels and to offer an opportunity for all parties involved in the conflict to provide information and evidence to the Court during the next phase of the investigation.

The investigation of the situation in Darfur is taking place within a context of ongoing violence and multiple efforts to secure peace, as well as a complex process of political transition. The Office will continue to be sensitive to those dynamics and will seek to reinforce the work of the African Union, the United Nations, the Sudan and other States and organizations. At the same time, however, the Office is focusing on its own work and conscious of the fact that accountability for the most serious crimes alleged to have been committed in Darfur is an essential component to effective peace and effective transition.

Having made the first steps towards a cooperative relationship, during the next phase we will seek the further assistance and cooperation of the Government of the Sudan in relation to the process of fact-finding and evidence-gathering. We will keep the Council informed of developments and challenges that arise during the next phase.

The President: I thank Mr. Moreno-Ocampo for his briefing.

Now, in accordance with the understanding reached in the Council's prior consultations, I would invite Council members to a private meeting following the adjournment of this meeting.

The meeting rose at 10.35 a.m.